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Supreme Court of the United States

October Term, 1977

No. 77-1274

ALUMINUM COMPANY OF AMERICA and JONES & LAUGHLIN STEEL CORPORATION,
Petitioners,

vs.

CUYAHOGA COUNTY BOARD OF REVISION and CLEVELAND BOARD OF EDUCATION,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

BRIEF OF RESPONDENTS IN OPPOSITION

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In accordance with Rule 40(3) of the United States Supreme Court Revised Rules, no repetition of the opinions below, jurisdictional basis, or statutes involved in the Petition is made in this Brief in Opposition. Respondent adopts Petitioner's statement of these items without approving the characterization made in Petitioner's listing.

QUESTION PRESENTED

Whether the requirement that a taxpayer answer, under oath and at the time of filing, all questions set forth on the Ohio real estate tax complaint form, is a reasonable administrative prerequisite to the right to an adjudication.

STATEMENT OF THE CASE

This case involves the failure by the Petitioners ("taxpayers") timely to answer the questions set forth on the Ohio real estate tax complaint form. The consequence of this failure was the dismissal of the taxpayers' tax complaints by the Board of Revision.

The tax complaint form in this case was prescribed by the Ohio Board of Tax Appeals ("BTA") and contained a section headed "The Following Pertinent Information Should be Submitted in Support of this Application." In the instruction section of the form, taxpayers are specifically cautioned:

> "Section 5715.13 of the Revised Code provides that THE BOARD SHALL NOT MAKE ANY REDUCTION UNLESS THE FACTS JUSTIFYING THE REDUCTION ARE SET FORTH AND SWORN TO. If complainant does not comply with those sections, the Board is without jurisdiction to consider the complaint." [Emphasis in original.]

Additionally, each year prior to the commencement of the tax complaint filing period, the County Auditor has published, in both newspapers of general circulation in Cuyahoga County, a Notice stating, *inter alia*:

> "It is necessary to furnish the Board FULL information by answering the questions set forth in the complaint form." [Emphasis in original.]

While the taxpayers' complaints were pending in the Board of Revision, the Ohio Supreme Court decided the case of *Stanjim Co. v. Board of Revision*, 38 Ohio St. 2d 233 (1974), *cert. den.*, 419 U.S. 1109 (1975). In *Stanjim*,

the Ohio Supreme Court found the questions set forth on the complaint form to be

> "wholly reasonable, non-oppressive, and clearly designed to elicit the information required by R. C. 5715.19 and 5715.13." *Stanjim*, 38 Ohio St. 2d at p. 236.

The court ruled that to vest the Board of Revision with jurisdiction to hear the tax complaint, the complainant must answer all of the questions set forth on the complaint form when it is filed.

Relying upon *Stanjim*, the Board of Revision notified the petitioning taxpayers that they had failed to provide all of the required information on the complaint form and that accordingly their complaints were dismissed. The taxpayers appealed the dismissal of their complaints to the Cuyahoga County Common Pleas Court which distinguished the *Stanjim* decision and remanded the complaints for hearing.

Shortly after the Common Pleas Court decisions, the Ohio Supreme Court decided *Griffith v. Board of Revision*, 44 Ohio St. 2d 225 (1975), and held that the slight differences between the *Stanjim* facts, which arose in Mahoning County, and the *Griffith* facts, which arose in Cuyahoga County, were of no legal consequence. The court, therefore, in *Griffith* found the reasoning of *Stanjim* fully applicable to tax complaints filed in Cuyahoga County.

The Board of Revision and Board of Education appealed the Common Pleas decision to the Ohio Eighth District Court of Appeals, which reversed the decisions of the lower court finding that *Stanjim* and *Griffith* controlled. The Ohio Supreme Court dismissed the taxpayers' appeals on the ground that no substantial constitutional question was raised.

REASONS FOR DENYING THE WRIT

In attempting to persuade this Court to accept these cases for review, the taxpayers have made the identical arguments made to the Ohio Supreme Court in their unsuccessful attempt to convince that Court to exercise its discretionary judgment. The taxpayers' constitutional arguments, in brief, are that they were not given "fair warning" that the questions on the complaint form had to be answered and that some taxpayers obtained tax reductions based upon incomplete tax complaints while the petitioning taxpayers' tax complaints were dismissed.

The first of these issues has been before the Ohio Supreme Court on two previous occasions and has been briefed in this Court on at least one occasion. In the cases of *Stanjim Co. v. Board of Revision, supra,* and *Griffith v. Board of Revision, supra,* the Ohio Supreme Court determined that the requirement that complainants have fair warning that they should answer the questions on the form was, without a doubt, met by the "cautionary statements" appearing on the form itself. The taxpayers' reliance on the assistant county prosecutor's letter to excuse their compliance with the instructions on the tax complaint form is unreasonable in light of the following equivocal language used in that letter:

> "An examination of the statutes and the rules of the Board of Tax Appeals, shows that the issue whether each and every and all of the questions set forth on the complaint form must be answered mandatorily, *has not been clearly defined.*" (Emphasis added)

There is certainly no such equivocation in the *published* Notice which informs all taxpayers that they must provide

"FULL information by answering the questions set forth in the complaint form."

The taxpayers' argument that they have been deprived of the equal protection of the laws must likewise fail when the facts and applicable decisions of this Court are considered. The crux of the taxpayers' claim is that there was inconsistent application of the requirement that all questions on the complaint forms must be answered. As the Ohio Court of Appeals noted, however,

> "the record demonstrates that the Board of Revision acted at all times in good faith and without the intent to invidiously discriminate against the appellees-taxpayers" (A 48).

Thus, the taxpayers' reliance on the case of *Yick Wo v. Hopkins,* 118 U.S. 356 (1886) is misplaced, for *Yick Wo* dealt with the administration of a law with the intention to discriminate against persons of Chinese ancestry. Many United States Supreme Court cases make it clear that:

> "erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws." *Snowden v. Hughes,* 321 U.S. 1, 8 (1943).

See Oyler v. Boles, 368 U.S. 448, 456 (1962); *Mackay Telegraph & Cable Co. v. City of Little Rock,* 250 U.S. 94 (1919); *Sunday Lake Iron Co. v. Township of Wakefield,* 247 U.S. 350 (1918) (burden of proof is on party challenging good faith of public officials). The law cannot be that having made a mistake in the performance of its duty a statutory board must thereafter continue to make the same mistake.

THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR REVIEW OF THIS CASE BY THIS COURT

This case involves the application of the well-settled principle that compliance with reasonable administrative conditions may be required. (*Ownbey v. Morgan,* 256 U.S. 94 (1921); *Dodge v. Osborn,* 240 U.S. 118, 122 (1916)).

This case does not involve any federal question of substance which has not previously been decided by this Court, nor was the decision below in any way not in accord with applicable decisions of this Court. In addition, the taxpayers have presented no special or important reasons for review by this Court and none exist. In fact, the complaint forms at issue herein are no longer even in use in Ohio.

Certainly it is not important for this Court to review the factual bases for the conclusions of the Courts below that "fair warning" was accorded or that the Board of Revision acted in good faith.

CONCLUSION

In conclusion, Respondents respectfully submit that the Writ of Certiorari prayed for in this action should be denied.

Respectfully submitted,

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